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March 11, 2005

Deborah Taylor Tate, Director

MEMORANDUM

TO: Ron Jones, Director
Sara Kyle, Director

FROM: Deborah Taylor Tate, Hearing Officer *DTT*

RE: Oral Arguments, Docket No. 04-00381

The Federal Communications Commission ("FCC") released its Triennial Review Remand Order ("TRRO") on February 4, 2004. On February 11, BellSouth Telecommunications, Inc. ("BellSouth") sent carrier notification letters to the competitive local exchange carriers ("CLECs"), stating that BellSouth is not required by the TRRO to offer certain unbundled network elements ("UNEs") or certain UNE pricing.¹ According to BellSouth, this change is self-effectuating as applicable to "new adds." Through the letter, BellSouth notified CLECs that it would not accept such orders as of March 11, 2005.

Several CLECs filed emergency motions asking the Tennessee Regulatory Authority ("Authority") to provide emergency relief and to issue an order preventing BellSouth from rejecting the UNE orders referenced in BellSouth's letter.² Several other CLECs filed letters in support of the petitions for relief and in opposition to BellSouth's proposed action.³ The CLECs contend that the change for "new adds" orders resulting from the TRRO must be negotiated through the change-of-law provisions in the parties' interconnection agreements.

¹ More specifically, BellSouth set forth that it was not required to offer the UNEs under the rates, terms and conditions of its existing interconnection agreements with CLECs, the TRRO provided a transition period for the CLECs "embedded base" of customers, and the TRRO was self-effectuating on March 11, 2004 for any "new adds."

² See *Motion for Emergency Relief*, (February 25, 2005); *MCI's Motion For Expedited Relief Concerning UNE-P Orders* (March 2, 2005); *Cinergy Communications Company's Motion for Emergency Relief* (March 2, 2005).

³ See *Letter From LecStar Telecom Submitted To BellSouth On February 24, 2005* (March 2, 2005); *ITC DeltaCom's Letter To BellSouth In Response To BellSouth's Carrier Notice Letter Dated February 11, 2005* (March 2, 2005), *Letter Notifying The TRA Of XO's Support Of The Motion For Emergency Relief* (March 3, 2005); *Response Of Navigator Telecommunications, LLC To BellSouth's Carrier Notification Letter SN91085039* (March 9, 2005).

On March 8, 2005 BellSouth filed *BellSouth Telecommunications Inc. 's Response in Opposition to the Joint Petitioners' Motion for Emergency Relief*. The same day, BellSouth also submitted a letter to the Hearing Officer concerning the upcoming March 11 deadline for "new adds" orders. BellSouth stated that it will continue to receive and will not reject orders for "new adds" until the earlier of (1) an order from an appropriate authority, allowing BellSouth to reject the orders, or (2) April 17, 2005. BellSouth notified the CLECs of this change by carrier notification letter dated March 7, 2005, and BellSouth provided a copy of that letter as an attachment to the Hearing Officer's letter.

I scheduled oral argument and noticed such for Monday, March 14, 2005, during the regularly scheduled Authority Conference before the voting panel assigned to this docket. At the March 8 status conference, we discussed and confirmed that the parties will be ready to proceed with oral arguments on March 14. The parties agreed that argument should conclude within one hour, including questions from the bench. BellSouth will be allotted one half-hour, and the CLECs jointly will be allotted one half-hour.

BellSouth has agreed to accept orders on "new adds" until April 17, 2005.